

Automated Reports Available Through ARMIS

ARMIS 43-02 - The annual report of telephone company organizational and financial data, and specifically:

Table B-3 - Investments in Affiliates and Other Companies

Table B-4 - Analysis of Assets Purchased From or Sold to Affiliates

Table I-2 - Analysis of Services Purchased From or Sold to Affiliates

ARMIS 43-03 - The annual report of telephone company revenues, income and expenses directly assigned, attributed or generally allocated to regulated and non-regulated and the amounts of each category subject to separations.

ARMIS 495-A - The forecast of nonregulated usage of the network investment for the current year plus 2 years.

ARMIS 495-B - A summary of actual nonregulated usage of the network investment during the past year.

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

APPENDIX B

In the Matter of)	
United Telephone System)	
Companies' Permanent Cost)	DA 91-1252
Allocation Manuals for the)	AAD 90-22
Separation of Regulated and)	
Nonregulated Costs)	

SOUTHWESTERN BELL TELEPHONE
COMPANY'S PETITION FOR
RECONSIDERATION

Pursuant to Section 1.106 of the Commission's Rules,¹ Southwestern Bell Telephone Company (SWBT) hereby submits its Petition for Reconsideration, pertaining to the Commission's Order on Reconsideration, released in this docket on October 4, 1991 (Order on Reconsideration).

I. BACKGROUND

On September 6, 1991, the Commission released a Memorandum Opinion and Order in this docket (September Order), addressing issues raised by MCI Telecommunications Corporation (MCI) concerning the consolidation of seven separate cost allocation manuals (CAMs) into one manual applicable to all Tier 1 United Telephone Systems Companies (United). To support one of its contentions, MCI attached a copy of a proposal from a United marketing representative to a customer, which MCI alleged pertained to a service that should have been included in the affiliate transaction section of United's CAM.² United responded that the provision of the marketing service in question was properly described in United's CAM as a nonregulated activity, since it was

¹ 47 C.F.R. Section 1.106.

² MCI Comments, pp. 3-4.

a product of a sales agency agreement between a United local exchange carrier (LEC) and US Sprint.³

The Commission dismissed each of MCI's allegations. In particular, the Commission concluded that United properly treated the marketing activity in question as a nonregulated activity and was not required to list this activity as an affiliate transaction in its CAM.⁴

SWBT did not intervene in this proceeding concerning the consolidation of United's CAM. MCI raised issues specifically directed only at the unique factual situation arising from United's proposed CAM consolidation, and the Commission's conclusions specifically related only to United's CAM.⁵ The proceeding involved no issues directly affecting SWBT. Pursuant to Section 1.106(b)(1), SWBT has shown good cause why it did not participate "in the earlier stages of the proceeding."⁶

In the Order on Reconsideration, the Commission stated that "we are reconsidering on our own motion" the September Order and held that:

[E]ach CAM must include "[a] statement identifying affiliates that engage in or will engage in transactions with the carrier entity and describing the nature, terms, and

³ See, September Order, para. 6.

⁴ September Order, para. 8.

⁵ September Order, paras. 7-10. The Commission did note that it may address the level of detail needed when CAM changes are made in a future "comprehensive consideration of CAM-related issues," but declined at this time to make broad changes to the CAM process. September Order, para. 9.

⁶ 47 C.F.R. Section 1.106(b)(1).

frequency of such transactions." All affiliate transactions must be listed. The fact that the service is . . . nonregulated has no bearing on the issue.⁷

The implication from the Commission's Order on Reconsideration is that the CAMs of all LECs must include in their listing of affiliate transactions nonregulated services rendered to the nonregulated affiliate. Such a broad holding adversely affects SWBT. Under Section 1.106(b)(1)⁸ of the Commission's Rules, SWBT has met the requirements for filing a Petition for Reconsideration, even though SWBT did not participate in the earlier stages of the proceeding.

II. THE COMMISSION DID NOT FOLLOW RELEVANT RULEMAKING PROCEDURES

Under the Commission's Rules, the Commission must give notice of proposed rulemaking to all persons subject to the proposed rules, and must provide all interested parties an opportunity to participate in the rulemaking proceeding.⁹

As the Commission noted in its September Order, the Commission's Rules provide that if a LEC renders a nonregulated service to a nonregulated affiliate, it should list this in the CAM as a nonregulated activity, not as an affiliate transaction.¹⁰ In the Order on Reconsideration, however, the Commission apparently is now requiring that "each" CAM, including SWBT's CAM, include all

⁷ Order on Reconsideration, para 2.

⁸ 47 C.F.R. Section 1.106(b)(1).

⁹ 47 C.F.R. Sections 1.412, .413, .415.

¹⁰ September Order, para. 8.

affiliate transactions, even if the service provided by the LEC to the affiliate is nonregulated. The Commission apparently has changed the existing rule, making a rule change without following the procedures for rulemaking.

The Commission did not follow relevant procedural rules in expanding its findings to "each CAM." If the Commission intended to make a holding that would change the existing rules governing the identification of affiliate transactions, it should have initiated a rulemaking proceeding on the proposed change.

III. THE ORDER ON RECONSIDERATION IS INCONSISTENT WITH PREVIOUS COMMISSION ORDERS

In its Joint Cost Order,¹¹ the Commission defined "nonregulated activities" as "all 'activities of a subject telephone company which are not common carrier telecommunication products and services subject to the tariff requirements as contained in Title II of the Communications Act of 1934 ...'" The Commission held that:

The pricing of individual nonregulated products and services does not fall within our statutory mandate. Complaints about predatory pricing in nonregulated markets are the province of the antitrust laws. The proper purpose of our cost allocation rules is to make sure that all of the costs of nonregulated activities are removed from the rate base and allowable expenses for interstate regulated services. It is not our purpose,

¹¹ In the Matter of Separation of costs of regulated telephone service from costs of nonregulated activities. Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to provide for nonregulated activities and to provide for transactions between telephone companies and their affiliates, CC Docket No. 86-111 (Joint Cost Order), released February 6, 1987, para. 50.

nor should it be our purpose, to seek to attribute costs to particular nonregulated activities for purposes of establishing relationship between cost and price.¹²

The Commission further concluded that: "Our goal in establishing standards for transactions between affiliates is to prevent cost shifting to ratepayers by means of improper transfer pricing."¹³

As the Commission indicated in the Joint Cost Order, the costing and pricing of nonregulated activities does not fall within the Commission's statutory mandate. The risk of cost shifting to ratepayers is nonexistent when the LEC offers a nonregulated service to a nonregulated affiliate. The Commission's Order on Reconsideration, which apparently requires nonregulated service offerings to nonregulated affiliates to be listed in the CAM as affiliate transactions, is inconsistent with the reasoning underlying the Joint Cost Order.

Further, the Commission's rules provide that the assets and services governed by the affiliate transaction rules are those involving transfers to or from "the regulated carrier" and recorded in the "accounts of regulated activity."¹⁴ The clear meaning of these rules would prohibit the Commission from requiring LECs to list in their CAMs as affiliate transactions those nonregulated services they provide to their nonregulated affiliates.

¹² Joint Cost Order, para. 40.

¹³ Joint Cost Order, para. 290.

¹⁴ 47 C.F.R. Section 32.27.

Finally, in a recent Order Inviting Comments,¹⁵ the Commission proposed to automate Form M schedules and to modify the data collected by requiring additional information on affiliate transactions. The proposed form would require carriers to provide the following additional data concerning assets purchased from or sold to affiliates:

- (1) the amount of assets purchased from or sold to affiliates under tariff; (2) the amount of assets purchased from or sold to affiliates at fair market value; and (3) the amount of assets purchased from or sold to affiliates at the prevailing market price.¹⁶

The Commission also proposes to require the following additional data elements for services purchased from or sold to affiliates:

- (1) the amount of services purchased from or sold to affiliates under tariff; (2) the amount of services purchased from or sold to affiliates at fair market value; and (3) the amount of services purchased from or sold to affiliates at the prevailing market price.¹⁷

Requiring SWBT to include each nonregulated service transaction with nonregulated affiliates as an affiliate transaction in the CAM would also require SWBT to add those nonregulated activities to proposed Form 43-02. Such inclusion would be inconsistent with the Joint Cost Order. SWBT should not be required to recite the terms and conditions required under proposed Form 43-02 for competitive, nonregulated product or service offerings

¹⁵ In the Matter of Revision of ARMIS USOA Report (FCC Report 43-02) for Tier 1 Telephone Companies, AAD 91-46, released September 4, 1991, (Order Inviting Comments).

¹⁶ Order Inviting Comments, Appendix A.

¹⁷ Order Inviting Comments, Appendix A.

IV. CONCLUSION

For all the above stated reasons, the Commission should grant SWBT's Petition for Reconsideration and reverse its decision to require a LEC to identify in its CAM as affiliate transactions those transactions involving the provision of nonregulated services by a LEC to its nonregulated affiliate.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

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November 4, 1991

CERTIFICATE OF SERVICE

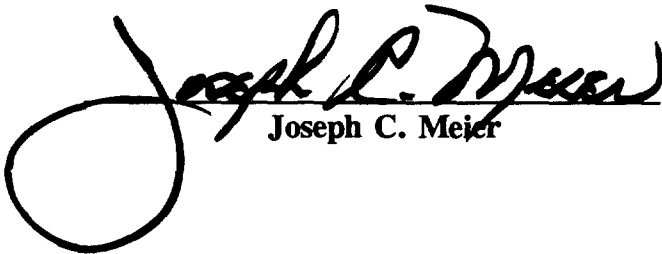
I, Liz Jensen, hereby certify that the foregoing
"Southwestern Bell Telephone Company's Petition For
Reconsideration" in Docket No. DA 91-1252/AAD 90-22 have been
served this 4th day of November, 1991 to the Parties of Record.

Liz Jensen
Liz Jensen

November 4, 1991

CERTIFICATE OF SERVICE

I, Joseph Meier, hereby certify that the foregoing "Comments of Southwestern Bell Telephone Company", in CC Docket No.93-251, has been served this 10th day of December, 1993 to the Parties of Record.


Joseph C. Meier

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